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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,988	11/16/2001	Margaret Henderson Hasse	8786	7943

27752 7590 12/30/2003

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EXAMINER

KIDWELL, MICHELE M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 12/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/993,988

Applicant(s)

HASSE ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3-7,9 and 11-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6,7,9,11 and 13-20 is/are rejected.
- 7) ☒ Claim(s) 5 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

Claim 7 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 7 is dependent upon canceled claim 10.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,7,9,14,16-20, are rejected under 35 U.S.C. 102(b) as being anticipated by Balzar (5891123).

For claims 1, 7 (as best understood), 9, 14 and 16 – 20, Balzar discloses a tampon and a method of making a tampon, where the tampon is made of absorbent material that is compressed into an absorbent member. The absorbent material is 10 and has surfaces and ends as claimed. The overwrap is 22 and is fluid wicking, has a skirt portion 48, substantially covers the exterior surface of

the absorbent member as claimed, and permeates into an inner region as claimed. It is inherent in the disclosure of Balzar that the skirt portion extends about 2mm or 5mm from the withdrawal end of the absorbent material. About 50% of a person's finger is placed inside the skirt portion that extends past the withdrawal end and this inherently satisfies the claimed range of claims 7 and 14( $\frac{1}{2}$  of a person's finger is more than 2mm or even 5mm in length). The withdrawal means for removal of the tampon is 88.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 3 – 4, 6, 11 and 15, are rejected under 35 U.S.C. 103(a) as being unpatentable over Balzar (5891123) in view of Sheldon et al. (5084038). For claim 6, the term "hydroentangled" is a product by process limitation and only the end structure that the process results in will be given patentable weight, not the manner in which it has been made. An overwrap with the same end structure can be made by different methods, so the limitation of hydroentangled does not recite any further structure to the overwrap, other than the overwrap itself.

For claims 3 – 4, 6 and 15, Balzar does not disclose that the overwrap can be made of natural and synthetic fibers in the claimed ratio (rayon/polyester). Balzar does list numerous materials that are suitable for the overwrap and does state that natural or synthetic are suitable, but Balzar does not disclose a combination of natural and synthetic fibers. Sheldon discloses a tampon that has an overwrap covering the absorbent material of the tampon (as is well known and old in the tampon art). Sheldon discloses that a particularly useful overwrap can be made of 15% rayon and 85% polyester. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Balzar with the preferred overwrap of Sheldon so that a more efficient overwrap with lower manufacturing costs can be obtained in the tampon of Balzar.

For claim 11, Balzar does not disclose that the overwrap is 100% rayon. Sheldon discloses a tampon that has an overwrap covering the absorbent material of the tampon (as is well known and old in the tampon art). Sheldon discloses that the overwrap can be made 100% rayon. It would have been obvious to one of ordinary skill in the art at the time the invention was made to

provide Balzar with a 100% rayon overwrap as disclosed by Sheldon. Rayon (being regenerated cellulose fibers) is cheaper than synthetic materials, is very biocompatible, and for these reasons one of ordinary skill in the art would find its use obvious.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Balzar (5891123) in view of Agyapong et al. (6554814). Balzar does not disclose the overwrap as being a rayon/polypropylene 50/50 blend. Agyapong discloses a tampon with an overwrap. The overwrap is disclosed as being particularly made from rayon, polyethylene, polypropylene, and blends of these materials. The statement "and blends of these materials" is broad and includes a blend of just rayon and polypropylene. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the overwrap of Balzar with a rayon/polypropylene overwrap as disclosed by Agyapong to obtain a good overwrap. With respect to the 50/50 blend, the examiner considers this to be a design choice that is within the purview of one of ordinary skill in the art. A rayon/polypropylene blend is known in the art, and arriving at an optimal ratio of the two materials involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 456, 105USPQ 233, 235 (CCPA 1955).

***Allowable Subject Matter***

Claims 5 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed August 18, 2003 have been fully considered but they are not persuasive.

In response to the applicant's argument that Balzar does not teach or disclose a fluid wicking overwrap that extends beyond the withdrawal end of the absorbent member to form a skirt portion, the examiner disagrees and refers to col. 6, lines 30 – 32 where Balzar discloses that the flexible finger sheath is an extension of the cover, which is a fluid wicking overwrap.

In col. 6, lines 36 – 38, Balzar also discloses that the portion of the cover surrounding the pledget is integral with the portion of the cover which forms the flexible sheath.

Further, in figure 2, Balzar shows a flat configuration of the cover that includes the first end of the flexible finger sheath (27) prior to the cover being wound to provide the end structure.

Even further, Balzar discloses that the overlap of the ends of the walls assures that the finger will be protected from being soiled in col. 7, lines 1 – 7.

In reply to the applicant's argument that the combination of Balzar and Sheldon would defeat the problem that Balzar is attempting to solve, the examiner disagrees. The applicant initially references col. 7, lines 20 – 34 of Balzar in which Balzar states that it is possible to chemically treat or perforate a portion of the cover **if desired** (emphasis added). It is not necessary to alter to cover that provides the flexible finger sheath in any manner. Balzar has

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previously disclosed that the cover, which forms the flexible finger sheath, is constructed of materials that should be easily penetrated by menstrual fluid (col. 4, lines 24 – 27). Whether or not the flexible finger sheath is perforated is not the pending issue. The claim requires the fluid wicking overwrap (22) to extend beyond the withdrawal end of the absorbent material (figure 6) to form a skirt portion (48) and as previously stated in the rejection of claim 1, Balzar meets the claimed limitations. Additionally, Balzar has already disclosed the cover comprising natural or synthetic fibers as set forth in col. 4, lines 24 – 32. Sheldon is merely relied upon to provide the claimed ratios not to provide the essential teaching of the use of the natural and synthetic fibers. Therefore, Sheldon could not possibly defeat the teachings of Balzar since the Balzar reference itself teaches the same materials as Sheldon for use with the invention.

The same response holds true in reply to the applicant's argument of the Agyapong reference.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Brown, Jr. (5185010), Messing (3854481), Lochte et al. (U52002/00261 77A1), Friese (4816100), and Balzar (5827256) disclose tampons with overwraps.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone number for the organization where this application or proceeding is assigned is 703-305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

  
Michele Kidwell  
December 26, 2003

  
GLENN K. DAWSON  
PRIMARY EXAMINER